

Tentative Rulings for May 25, 2016
Departments 402, 403, 501, 502, 503

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).)

14CECG01296 *Slyter v. Manco Abbott Inc.* (Dept. 402)

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 402

03

Tentative Ruling

Re: ***Keroglian-Khorozian v. Sueldo***
Case No. 15 CE CG 01555

Hearing Date: May 25th, 2016 (Dept. 402)

Motion: Defendants Sueldo and Women's Specialty & Fertility
Center's Motion for Summary Judgment

Tentative Ruling:

To grant defendants' motion for summary judgment as to the entire complaint. (Code Civ. Proc. § 437c.) Defendants are directed to submit to this court, within 5 days of service of the minute order, a proposed judgment consistent with the court's summary judgment order.

Explanation:

Plaintiffs have alleged that defendants negligently provided infertility treatment to plaintiff Rose Keroglian-Khorozian between March 29th, 2013 and May 15th, 2014. Plaintiff also alleges that she did not learn of the negligence until April 21st, 2014, when a CT scan showed the presence of a 15 cm abscess. (Complaint, p. 4, ¶¶ 1-3.) She claims to have suffered damages as a result of the defendants' negligence. Her husband, Raffi Khorozian, also alleges a claim for loss of consortium based on the same facts.

However, when a defendant in a professional negligence case moves for summary judgment and supports its motion with competent expert testimony showing that its conduct fell within the standard of care, or the conduct did not cause injury to the plaintiff, the defendant is entitled to summary judgment unless the plaintiff comes forward with conflicting expert testimony. (*Powell v. Kleinman* (2007) 151 Cal.App.4th 112, 123.)

Here, defendants' expert has offered his opinion that defendants did not breach the standard of care and did not cause plaintiff's injuries. Therefore, the burden shifts to plaintiff to show through her own expert testimony that defendants did breach the standard of care, and that the breach caused her injuries. However, plaintiffs have not filed any opposition or offered an expert declaration regarding the issues of breach and causation. Therefore, the court intends to find that plaintiffs have failed to meet their burden of raising any triable issues of material fact, and that defendants are entitled to summary judgment on the entire complaint.

Pursuant to CRC 3.1312 and CCP §1019.5(a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: JYH **on** 5/24/16 .
 (Judge's initials) (Date)

(5)

Tentative Ruling

Re: ***American Payroll Outsourcing, Inc. v. National Logistics Team, LLC***
Superior Court Case No. 16 CECG 00525

Hearing Date: May 25, 2016 **(Dept. 402)**

Petition: To Confirm Arbitration Award

Tentative Ruling:

To deny the Petition without prejudice.

Explanation:

Law Governing Petition to Confirm

Until an arbitration award is confirmed by court judgment, it has only the effect of a contract between the parties. [CCP § 1287.6] Accordingly, the party seeking confirmation of the award must file and serve a petition to confirm. See CCP § 1285. If a petition or response requesting confirmation is duly filed and served, the court must confirm the award as made, unless it corrects or vacates the award or dismisses the proceeding. [CCP § 1286 and see *Valsan Partners Ltd. Partnership v. Calcor Space Facility* (1994) 25 Cal.App.4th 809, 819 and *Weinberg v. Safeco Ins. Co. of America* (2004) 114 Cal.App.4th 1075, 1084.]

A party may seek confirmation by filing and serving a petition at least 10 days, but no more than 4 years, after service of the award on that party. [CCP §§ 1288 and 1288.4] The petition must name as respondents all parties to the arbitration and may name any other persons bound by the award. [CCP § 1285; see *Walter v. National Indem. Co.* (1970) 3 Cal.App.3d 630, 634.] The petition or response must also set forth the substance of the arbitration agreement or have a copy attached, name the arbitrator, and set forth or have attached a copy of the award and the arbitrators' written opinion, if any. [CCP § 1285.4.] Service and hearing are governed by the same provisions as petitions to compel arbitration. (See CCP § 1290 et seq. and see *Oaktree Capital Management, L.P. v. Bernard* (2010) 182 Cal.App.4th 60, 66--party's response to petition to confirm arbitration award filed over 2 months later was timely under 10-day rule in CCP § 1290.6 where time was briefly extended for service by overnight mail and matter was temporarily removed to federal court.)

Hearing at Bench

The Petition seeking confirmation was initially filed on February 19, 2016. The Petition was denied without prejudice on April 7, 2016 on the grounds that the Petition was filed too early; 2 days after the award. See CCP § 1288. It was also denied on the

grounds that the Petition was served on the Respondent via mail instead of service via summons. Lastly, Respondent was not given notice of the hearing date.

On April 25, 2016, the Petitioner filed a Notice of Hearing attaching the Petition seeking confirmation. The hearing date was set for May 25, 2016. Proof of service was filed. It indicates that the Respondent was served via substituted service on May 3, 2016; i.e., the father of the agent for service of process was served. However, whenever a party is served via substituted service, service is not deemed complete until an additional 10 days have passed. See CCP § 415.95(a). Therefore, service was not complete until May 13, 2016.

CCP § 1290.2 states:

A petition under this title shall be heard in a summary way in the manner and upon the notice provided by law for the making and hearing of motions, except that not less than 10 days' notice of the date set for the hearing on the petition shall be given.

The Petitioner may argue that the Respondent had 12 days' notice of the hearing. But, the statute requires the same notice "provided by law for the making and hearing of motions." Technically, pursuant to CCP § 1005, the hearing should have been set for 16 court days after completed service on the Respondent; i.e., June 7, 2016. It appears that the language regarding "not less than 10 days' notice" refers to Orders Shortening Time.

Finally, the proof of service is defective. Item 6.d. states that: "The 'Notice to the Person Served' (on the summons) was completed as follows..." However, the process server checked off "corporation". The Respondent is not a corporation. It is an LLC. Therefore, the Petition will be denied without prejudice.

Pursuant to California Rules of Court, Rule 391(a) and Code of Civil Procedure § 1019.5, subd. (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: JYH on 5/24/16.
(Judge's initials) (Date)

(6)

Motion: By Cross Defendants United Auto, Inc., dba Auto Shopper, and Mohammad Saadeldin to set aside default

To grant, and to award Cross Complainant Aegis Security Insurance Company its reasonable attorney's fees and costs against attorney Gregory Mason in entering Cross Defendants defaults, with Cross Complainant to bring to the hearing a declaration outlining the attorney's fees and costs incurred, which must be provided to Cross Defendants before the hearing. Cross Defendants may file and serve their proposed answer to the cross complaint no later than June 3, 2016.

IF ORAL ARGUMENT IS REQUESTED, IT WILL BE ENTERTAINED ON THURSDAY, MAY 25, 2016 AT 3:00 PM.

Where an attorney's failure to file an answer is a conscious decision to save money due to his belief that the matter would be settled, admitting mistake in this regard, relief under the attorney affidavit-of-fault provision is mandatory. (*Solv-All v. Superior Court* (2005) 131 Cal.App.4th 1003, 1009.)

Awarding of attorney's fees and costs, paid by the attorney, is also mandatory. (Code Civ. Proc., § 473, subd. (b).)

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Issued By: KCK on 5/24/16.
(Judge's initials) (Date)

Tentative Ruling

Re: **Moreno Enterprises, Inc. v. Delgado**
Case No. 16 CE CG 00902

Hearing Date: May 25th, 2016 (Dept. 403)

Motion: Plaintiff's Application for Writ of Possession, and Motion to Transfer Small Claims Case to Unlimited Civil Court and Consolidate Cases

Tentative Ruling:

The court intends to *sua sponte* reclassify the unlimited civil action to limited civil court, as the amount of damages pled in the complaint does not exceed the jurisdictional limit for limited civil actions. (Code Civ. Proc. §§ 85, 86, 403.040, subd. (a).)

In light of this ruling, the application for writ of possession and motion to transfer and consolidate actions are moot and will be denied without prejudice. However, plaintiff Moreno may refile these motions in the limited civil court.

IF ORAL ARGUMENT IS REQUESTED, IT WILL BE ENTERTAINED ON THURSDAY, MAY 25, 2016 AT 3:00 PM.

Explanation:

It appears that Moreno's case has been brought in unlimited civil court when it should have been filed as a limited civil action. Moreno's complaint seeks just over \$22,000 in damages, which does not exceed the jurisdictional limit for damages for limited civil actions. (Code Civ. Proc. §§ 85, 86.) The prayers for attorney's fees, costs, and interest are not considered in determining the amount of damages for jurisdictional purposes. (*Ibid.*) Thus, Moreno's action should have been brought as a limited civil case. As a result, the court intends to *sua sponte* reclassify the unlimited civil action as a limited civil action based on the inadequate amount of damages pled in the complaint. (Code Civ. Proc. § 403.040, subd. (a): "The court, on its own motion, may reclassify a case at any time.") Also, in light of the reclassification, the court intends to deny the application for writ of possession and motion to transfer and consolidate the actions, without prejudice to refiling them in limited civil court.

Pursuant to CRC 3.1312 and CCP §1019.5(a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: KCK on 5/24/16.
(Judge's initials) (Date)

Tentative Rulings for Department 501

(23)

Tentative Ruling

Re: ***Linda Etta Johnson v. Guadalupe Josefina Gutierrez***
Superior Court No. 15CECG03824

Hearing Date: Wednesday, May 25, 2016 (**Dept. 501**)

Motions: (1) Defendants Guadalupe Josefina Gutierrez's and Maria Asuncion Gutierrez's Motion for Order Compelling Plaintiff Linda Etta Johnson to Answer Form Interrogatories, Set One

(2) Defendants Guadalupe Josefina Gutierrez's and Maria Asuncion Gutierrez's Motion for Order Compelling Plaintiff Linda Etta Johnson to Answer Special Interrogatories, Set One

(3) Defendants Guadalupe Josefina Gutierrez's and Maria Asuncion Gutierrez's Motion for Order Compelling Plaintiff Linda Etta Johnson to Respond to Request for Production of Documents, Set One

(4) Defendants Guadalupe Josefina Gutierrez's and Maria Asuncion Gutierrez's Motion to Deem the Truth of Matters Specified in Request for Admissions, Set One, Admitted and Conclusively Established

Tentative Ruling:

To grant Defendants Guadalupe Josefina Gutierrez's and Maria Asuncion Gutierrez's motions for order compelling Plaintiff Linda Etta Johnson to answer Form Interrogatories, Set One, and Special Interrogatories, Set One, and to respond to Request for Production of Documents, Set One. (Code Civ. Proc., §§ 2030.290, subd. (b) & 2031.300, subd. (b).) Plaintiff Linda Etta Johnson is ordered to serve verified initial responses, without objection, to Form Interrogatories, Set One, Special Interrogatories, Set One, and Request for Production of Documents, Set One, within 10 days after service of the minute order.

To grant Defendants Guadalupe Josefina Gutierrez's and Maria Asuncion Gutierrez's motion to deem the truth of matters specified in Request for Admissions, Set One, admitted and conclusively established. The truth of all matters specified in Request for Admissions, Set one, is deemed admitted.

To grant Defendants Guadalupe Josefina Gutierrez's and Maria Asuncion Gutierrez's requests for monetary sanctions in the total amount of \$840.00 against Plaintiff Linda Etta Johnson and in favor of Defendants Guadalupe Josefina Gutierrez

Explanation:

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: MWS on 5/24/16.
(Judge's initials) (Date)

Tentative Rulings for Department 502

Tentative Rulings for Department 503